

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ANTONIO GALLEGOS, KRISTIAN PETTINE,
and ANDRE GALLEGOS,

Plaintiffs,

-vs-

No. Civ. 12-0224 LH/KBM

CITY OF ESPANOLA, a municipal corporation;
JOE MARTINEZ, individually and in his official
capacity; JEREMY APODACA, individually and in
his official capacity; ROBERT VIGIL, individually
and in his official capacity; CITY OF ESPANOLA
OFFICERS and SUPERVISORS JOHN DOES 1
through 10, individually and in his official
capacities,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants' Motion for Leave to File Motions for Partial Summary Judgment on Qualified Immunity Grounds (ECF No. 137), filed August 11, 2014. The Court, having reviewed the Motion and the applicable law, and otherwise being fully advised, finds the Motion is well taken and will be **granted**.

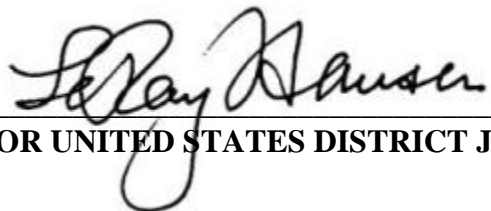
Defendants request leave to file two Motions for Partial Summary Judgment on Qualified Immunity Grounds. Plaintiffs apparently do not concur, but they have failed to respond to this Motion in a timely manner, have not given notice to the Court of any agreed upon extension of

the deadline to respond, and have not moved for an extension of time within the applicable fourteen-day period. *See* D.N.M.LR-Civ. 7.4(a).

“The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” *Id.* 7.1(b). Additionally, the Court finds Defendants’ Motion is well taken. In the first place, Defendants pled the affirmative defense of qualified immunity in their Answer to Third Amended Complaint, (ECF 53), filed May 7, 2013, ¶ 21. Additionally, the Court finds the Motion has been raised in sufficient time to preclude any prejudice to Plaintiffs that might be caused by any delay. *See Ahmad v. Furlong*, 435 F.3d 1196, 1202 (10th Cir. 2006) (citing *Ball Corp. v. Xidex Corp.*, 967 F.2d 1440, 1443-44 (10th Cir. 1992) (“[W]e have held that an affirmative defense was not waived for trial purposes when it had first been raised in a motion for summary judgment three months earlier.”). Furthermore, the Court is unaware of any other prejudice to Plaintiffs attributable to granting this Motion.

WHEREFORE,

IT IS HERBY ORDERED that Defendants’ Motion for Leave to File Motions for Partial Summary Judgment on Qualified Immunity Grounds (ECF No. 137), filed August 11, 2014, is **GRANTED** and Defendants shall file their Motions no later than Wednesday, September 3, 2014.



SENIOR UNITED STATES DISTRICT JUDGE